IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1646 of 2007

NATIONAL INSU.CO.LTD.
V/S
SRIGANGANAGAR CAT & H.C. & ANR.

Mr. SANJEEV JOHARI, for the appellant / petitioner

Date of Order : 16.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner and perused the award impugned Annexure 2.

May be that the learned Lok Adalat may not be correct in refusing the prayer of the petitioner about existence of Arbitration Clause, on the ground of policy being not signed by insurer, but then, that is not end of the matter; inasmuch as the learned Lok Adalat has quoted the provisions of Section 8(1)of the Arbitration Act, and even a look at the entire provision of Section 8 also does show, that the application was required to be made not later when submitting his first statement on the substance of the disputes. Secondly, that according to sub-Section (2) such application cannot be entertained unless it is accompanied by the original arbitration agreement, or a duly certified copy thereof.

In the present case, the reply was filed on behalf of the petitioner before the learned Lok Adalat on 10.08.06 and the application in this regard has been filed on 7.10.06. This is one aspect of the matter. The other aspect is, that a look at sub-Section (3) shows, that notwithstanding such application having been filed and notwithstanding the issue being pending before the Lok Adalat, it clearly keeps it open to the parties to commence arbitration, and permits it to be continued, and arbitral award is permitted, to be made. Admittedly, no steps have been taken by the petitioner to appoint arbitrator, even till the date, in accordance with the conditions contained in Clause 7 of the Insurance policy.

In that view of the mater, it cannot be said that the Lok Adalat was in error in adjudicating the claim on merits, on the face of stipulation contained in Section 7 of the policy.

Then coming to the merits, admittedly the part of the CT SCAN Machine being QD Coil was damaged, and had to be replaced. It is not the case of the petitioner, that the part was capable of being repaired, and according to the Clause of the policy read to me, no deduction was permissible to be made from the price of the part required to be replaced, unless it is shown that the part required to be replaced had a specific life. It is not established

that the part of body had a particular life prescribed. In that view of the matter, it cannot be said that the learned Lok Adalat was in error in directing the petitioner to pay the cost of the part. The learned Lok Adalat has considered the aspect that the manufacturer or the supplier being M/s. Blue Star Limited has clearly conveyed that that particular part being QD Body Coil does not have any specified life.

In that view of the matter, the matter does not warrant any interference of this Court in writ jurisdiction. Accordingly, the writ petition is dismissed summarily.

(N P GUPTA),J.

/anil/